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Office of the Inspector General

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James H. Salvie
General Counsel
Massachusetts Teachers Retirement System
One Charles Park
Cambridge, MA 02142-1206

Dear Mr. Salvie:

The Office of the Inspector General (OIG) is currently reviewing information regarding the Merrimack Special Education Collaborative (MSEC) and Merrimack Education Center, Inc. (MEC).

I am writing, pursuant to 945 CMR 1.09(3)(c), to notify you of matters related to our review that may be appropriate for administrative action by the Massachusetts Teachers Retirement System (MTRS). In particular, I would like to call your attention to information about John Barranco's work history – both before and after his 2005 retirement from MSEC – that raises fundamental questions about the validity of Mr. Barranco's more than $155,000-a-year public pension.

Through his attorney, Mr. Barranco declined the OIG's request for an interview.

Based on documents provided by MSEC and MEC as well as interviews with current and former board members and former employees, the OIG believes that Mr. Barranco's job did not change significantly after his retirement in 2005 and that while he held the title executive director of MSEC, he reported primarily to the MEC board.

The current co-executive directors of MSEC maintain that Mr. Barranco has had no role at MSEC since his retirement in 2005. However, we find their assertions unconvincing. We believe that recent attempts to separate the operations of MSEC and MEC were made in large part in response to scrutiny from MTRS, the OIG and other state agencies.

We are providing the following information to your office as you prepare for the hearing Mr. Barranco has requested before the Division of Administrative Law Appeals (DALA).

Excess Earnings

In November 2010, the MTRS found that as part of his post-retirement employment at MEC Mr. Barranco continues to provide services to MSEC and, therefore, is in violation of M.G.L. c. 32 § 91. The Hearing Officer's Decision on John Barranco's Excess Earnings (MTRS Decision) assumed that Mr. Barranco devoted 25 percent of his time to each of MEC's four business divisions. The MTRS Decision noted that the hearing officer guessed at the 25 percent allocation because he lacked more specific information.

Documents obtained by the OIG show that following Mr. Barranco's 2005 retirement, MEC continued to charge MSEC for 55 percent of his salary under the June 30, 2006 Administrative Services and License Agreement between MEC and MSEC (2006 Agreement). The 2006 Agreement is the same document you attached to the MTRS Decision as Exhibit 34.

We believe the additional documents detailing MSEC's annual payments to MEC under the 2006 Agreement were not made available to MTRS. They show that:

- From July 1, 2006 to June 30, 2007 MEC charged MSEC for 55 percent of Mr. Barranco's $195,000 salary (or $107,250), and
- From July 1, 2007 to June 30, 2008 MEC charged MSEC for 55 percent of Mr. Barranco's $227,461 salary (or $125,103.55).

MEC stopped charging MSEC for a portion of Mr. Barranco's salary after the MTRS began its inquiry in April 2009.

The figures provided here are different from the ones cited in the MTRS Decision because MEC does not appear to charge MSEC for Mr. Barranco's bonus.

These payment documents are public records in the possession of MSEC. We recommend that MTRS request them from MSEC prior to Mr. Barranco's DALA hearing.

Mr. Barranco's W-2s provide a third set of compensation numbers. They show that:

- In 2006, the first full year following his retirement from MSEC, MEC paid Mr. Barranco $419,141 in salary and bonus;
- In 2007, he collected $348,896 in compensation from MEC;
- In 2008, MEC paid Mr. Barranco a total of $457,809, and
- In 2009, Mr. Barranco earned $553,842 from MEC.

We suggest that MTRS consider changing Mr. Barranco's Excess Earnings calculation to reflect the fact that 55 percent of his salary continued to be paid by MSEC through June 30, 2008. The OIG also suggests that MTRS consider initiating an investigation into whether Mr. Barranco also exceeded the limits on retirees' work hours imposed by M.G.L. c. 32 § 91.

Pension Calculation

Mr. Barranco's pension is based, in part, on two extremely questionable assumptions: First, that Mr. Barranco worked full time for MSEC from Jan. 1, 1994 to Aug. 31, 2005, a total of 11.75 years, and second, that the average $207,010.59 salary he received during the three years prior to his retirement was compensation solely attributable to his work at MSEC.

Those two assumptions stand – and fall – together and must be addressed jointly.

On Aug. 18, 2005, Matthew A. Ferron, then director of education and member relations for MTRS, wrote to Mr. Barranco asking for clarification about the origin of his salary. "Specifically, how much of your compensation is derived from the 'public' operation of the collaborative?"

Sally Adams, an attorney at Seyfarth & Shaw, replied to Mr. Ferron on behalf of both MSEC and MEC.

"Dr. Barranco has separate agreements with MEC and the Collaborative as he serves as the Executive Director and Clerk/Treasurer of MEC, as well as Executive Director of the Collaborative. By arrangement between MEC and the Collaborative, Dr. Barranco is paid for his services to MEC through the Collaborative payroll," Ms. Adams wrote.

She went onto explain that Mr. Barranco's "total payroll compensation was $250,534.99 for FY2003, $308,191.39 for FY2004, and $332,201.37 for FY2005. The payroll amount attributable to Dr. Barranco's compensation for services rendered to MEC was subtracted from these amounts when Dr. Barranco's compensation for services rendered to the Collaborative was reported to your Board in his retirement application."

Documents examined by the OIG to date strongly suggest that before Mr. Barranco retired from MSEC, he had a single employment agreement that was approved by both the MEC and MSEC boards.

On March 20, 2003, MEC's board went into executive session to discuss the proposal "submitted by John Barranco regarding his contract for the next three years (July 1, 2003 to July 1, 2006)." The minutes report Mr. Barranco's current salary as $164,612.74 and his current annuity as $17,856. The minutes also report that Mr. Barranco is seeking a 6 percent raise in fiscal 2004. "John will be 62 at the end of 2004. He is not concerned about raises after he turns 62."

According to the minutes, the board rejected a flat 6 percent salary increase, calling it "not a realistic figure." The board then came up with a plan to "repackage to reduce the 6 % increase" and still provide Mr. Barranco with his proposed level of compensation with a "longevity provision."

In a unanimous roll call vote, the MEC board approved the following contract terms for Mr. Barranco:

- In fiscal 2003, a retroactive 3 percent raise and an additional $5,000 on his annuity;
- In fiscal 2004, a 3 percent raise, plus a $5,000 longevity bonus and an extra $1,000 in his annuity;
- In fiscal 2005, a 3 percent raise, plus an extra $1,000 in his annuity.

The OIG sought the contract MEC approved on March 20, 2003 through an investigative summons. MEC did not provide it. MEC's current attorney, Elissa Flynn-Poppey of Mintz Levin, stated that "after a reasonable and diligent search," MEC was unable to locate Mr. Barranco's MEC contract for the fiscal years 2003 to 2006.

The OIG subsequently requested Mr. Barranco's contracts mentioned in MEC meeting minutes in 1994, 1997, 1998, 1999, 2000, 2001 and 2004. Ms. Flynn-Poppey responded that MEC could not locate any contract with Mr. Barranco prior to the one dated July 1, 2007. We believe that Ms. Flynn-Poppey provided the same contract to both MTRS and the OIG.

In contrast, MSEC provided copies of Mr. Barranco's contracts dated 1997, 1999, 2001 and 2003. MSEC also provided its board meeting minutes from January 1995 to the present. MSEC's board minutes don't mention Mr. Barranco's contract until April 26, 2001 when the minutes record a vote approving Mr. Barranco's contract for the first time.

In addition, meeting minutes provided by MSEC for its April 10, 2003 executive session make it clear that the April 10, 2003 contract between MSEC and Mr. Barranco (provided to MTRS and the OIG) is Mr. Barranco's only employment agreement covering fiscal years 2003 to 2006.

"James McCormick, as Chairman of the Merrimack Education Center, Inc. Board of Directors presented the contract for Executive Director, John B. Barranco, Ed.D. Mr. McCormick explained that both the Merrimack Education Center, Inc. Board of Directors and the Merrimack Special Education Collaborative Board of Directors are required to approve his contract. He therefore made a motion to accept the contract of John B. Barranco, Executive Director as presented. David Hawkins seconded the motion which was approved by unanimous vote," according to the MSEC minutes.

The MSEC executive session minutes do not record any discussion of the contract terms. It appears that the MSEC board was acting at the direction of the MEC board. Documents and interviews confirm that throughout this period MEC controlled MSEC.

Finally, Mr. Barranco's April 10, 2003 contract with MSEC implements the terms approved by the MEC board a month earlier.

A former school superintendent who sat on both boards until the fall of 2004 described the relationship between the two entities as parent company to subsidiary operation. She called MEC's board the "main board."

"It's like the main board was the grown-ups table," she said in an interview.

Documentary evidence also points to the fact that the MEC board controlled the MSEC board throughout Mr. Barranco's tenure as MSEC executive director and at least until 2007. For instance,

- The June 27, 2004 MEC board minutes show that the MEC board appointed Christine McGrath, then superintendent of Tewksbury, as vice-chair of the MEC board and "Chair of the MEC Special Education Board."
- Until fiscal 2006, MEC included MSEC's performance in a single Financial Statement entitled, "Merrimack Education Center Incorporated and Affiliates." In the Sept. 20, 2007 MEC board minutes, Mr. Barranco explained why the organizations no longer filed a joint financial statement, "For years the Collaborative was an arm of MEC. We chose to make it public – separated."
- The 1991 agreement that governed the relationship between MEC and MSEC until 2006 gave MEC the power to "assign an appropriate staff person to serve as Director of the Collaborative."
- Finally, on Nov. 8, 2007, the MSEC board voted to amend its 2006 Agreement with MEC to insert the words: "MSEC shall be subject to the general management oversight of the MEC Executive Director."

MSEC's subsidiary relationship to MEC, raises serious questions about Ms. Flynn-Poppey's assertion in her July 17, 2009 letter to Robert G. Fabino, associate general counsel to MTRS, that "Dr. Barranco reported to MSEC's Board of Directors when he was employed by MSEC... (Currently), Dr. Barranco as Executive Director of MEC reports to MEC's Board of Directors."

Although MEC has not provided the OIG with any employment contracts with Mr. Barranco prior to July 1, 2007, in response to an investigative summons, MEC did provide the OIG with information about a bonus incentive plan that was initiated in 1994 when MEC hired Mr. Barranco.

The bonus incentive plan distributes 20 to 25 percent of the shared profits of MEC and MSEC. Under the plan, MEC's executive director, Mr. Barranco, receives 30 percent of the bonus pool. We believe that Mr. Barranco's bonuses account for the difference between the total salary Ms. Adams reported to MTRS and the MSEC salary she reported.

In her Sept. 1, 2005 letter to Mr. Ferron, Ms. Adams also states that "by arrangement between MEC and the Collaborative, Dr. Barranco is paid for his services to MEC through the Collaborative payroll."

During our review, the OIG requested and received MSEC payrolls from Jan. 1, 2003 to present. Those payrolls use cost centers to allocate payments for internal accounting purposes. During the relevant period, Mr. Barranco's salary was charged to a MEC-specific cost center for internal accounting purposes.

Interestingly, an undated resume for Mr. Barranco provided by MEC does not mention MSEC at all. The most recent entry under Administrative Experience reads "1993-Present: Executive Director – Merrimack Education Center (A non-profit corporation which provides educational and technological services for its thirty-plus member school systems and for various state, federal and private agencies.)"

Interviews with former employees revealed that even during his tenure as MSEC executive director, Mr. Barranco focused most of his attention on MEC, leaving the day-to-day operations of MSEC to Mary Clisbee, the senior associate director of MSEC, who from July 2004 until July 2007 also held the title deputy executive director of MEC.

MEC board minutes confirm this account, repeatedly showing Ms. Clisbee reporting to the MEC board about MSEC's activities.

When Mr. Barranco retired from MSEC, the MEC board appointed Ms. Clisbee to replace him as MSEC executive director. Her compensation package was crafted by the MEC compensation subcommittee. Ms. Clisbee's appointment was announced at a MSEC board meeting. MSEC's board meeting minutes did not record a vote to ratify the appointment.

In summary, the OIG believes that Mr. Barranco was never a full-time employee of MSEC, that the salary he presented to MTRS for retirement calculation represented compensation from both MSEC and MEC. I urge MTRS to reexamine Mr. Barranco's pension in light of this information.

This office is providing you with notice of the information we obtained in the course of our review as it may be relevant and appropriate as you prepare for the DALA hearing.

Thank you for your attention to this matter.

Sincerely,

Gregory W. Sullivan

Gregory W. Sullivan
Inspector General